BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

Under the Real Estate (Regulation And Development) Act, 2016

Reserved on : 29.09.2023

Delivered on : 09.10.2023

Coram : Hon'ble Mr.Justice M.Duraiswamy, Chairperson
Mr.R.Padmanabhan, Judicial Member

Appeal No.17 of 2022

P.Rani Vellamal ... Appellant

- Vs -

1. M/s. Green Avenue Homes & Gardens
   rep. by its Proprietor, D.Dinakaran

2. M/s. Artha Properties,
   rep. by its CEO, Suresh Rangarajan

3. M/s. Bennet Property Holdings
   Company Limited,
   rep. by its Authorised representative A.Senthilkumar

4. M/s. Artha Real Estate Corporation Limited,
   rep. by its Authorised Representative ... Respondents
   (R4 impleaded as per order in M.A.126/2022, dt. 23.01.2023)

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to modify the Order dated 28.01.2022 in C.C.P.No.139/2019 to make Respondents 2,3 and 4 also accountable and jointly liable along with R1 to the compensation

and other amounts awarded by the learned Adjudicating Officer, TNRERA, Chennai.

(Amended the relief as per order in M.A.No.10/2023, dated 23.01.2023).

For Appellant : Mr. Pavan Kumar Gandhi

For 1st Respondent : No appearance

For Respondents 2 to 4 : Mr.S. Deva Kumar
for M/s.Tatva Legal

ORDER

The brief facts that are relevant for the disposal of the above appeal are as follows:

1. The appellant was an allottee of the residential project by name "Dakshin Avenue", Phase 5, situated at Unamancherry, Vandalur, Chennai - 600 048. According to the Appellant/Allottee, the name of the 2nd Respondent Company has been wrongly mentioned as M/s.Artha Properties instead of M/s.Artha Real Estate Corporation Limited. The Appellant/Allottee filed an application in M.A.No.126/2022 for impleading M/s.Artha Real Estate Corporation. The said M.A.No.126/2022 was allowed on 23.01.2023 and the proposed Respondent namely M/s.Artha Real Estate Corporation Limited, was impleaded as the 4th Respondent in the Appeal. At the time of passing the said order, it was made clear that the issue with regard to the liability of the Respondents 2 to 4 are kept open and the same shall be decided at the time of deciding the Appeal.

2. The Appellant/Allottee, seeking compensation for the delayed handing over of possession, has preferred a Complaint before the learned Adjudicating Officer, TNRERA in C.C.P.No.139 of 2019. After

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enquiry, the learned Adjudicating Officer awarded interest at 10.65% per annum on the amounts paid by the Appellant/Allottee, as compensation for the delay in handing over of possession. While awarding compensation, the learned Adjudicating Officer dismissed the Complaint as against the Respondents 2 and 3, by holding that they are only real estate agents of the 1st Respondent/Promoter. Aggrieved over the exoneration of the Respondents 2 and 3, the Appellant/Allottee preferred this Appeal before this Tribunal.

3. It is the case of the Respondents 3 and 4, that an amalgamation scheme between the Respondents 3 and 4 Companies, was approved by the NCLT, Mumbai as per order dated 09.08.2018 in C.P.(CAA)/1848/MB/2018. By the said amalgamation scheme, M/s. Artha Real Estate Corporation Limited and M/s.Artha Infra Projects Limited were declared as demerged companies and M/s.Bennet Property Holdings Company Limited was declared as the resulting Company. As per the said NCLT order, the appointed date was declared as 01.04.2017.

4. Even prior to the said NCLT order, i.e on 15.11.2011, there was a Marketing Agreement executed between the 1st Respondent/Promoter and the 3rd Respondent. According to Respondents 2 to 4, the 4th Respondent initially acted as the real estate agent of the 1st Respondent/Promoter and subsequently, after the order passed by the NCLT, and as per the approved scheme of amalgamation, the 3rd Respondent stepped into the shoes of the 4th Respondent with effect from the appointed date i.e., 01.04.2017. According to the Respondents 2 to 4, they acted only as the agents of the 1st Respondent/Promoter. According to the learned counsel for the Respondents 2 to 4, the order passed by the learned Adjudicating

Officer, exonerating the Respondents 2 and 3, is correct and the Appeal is liable to be dismissed.

5. Heard both sides.

6. Admittedly, the Appellant/Allottee entered into a Construction Agreement dated 22.03.2012 with the 1st Respondent/Promoter for construction of a Villa having built up area of 2190 sq. ft. in a villa plot measuring 1065 sq. ft. The Sale Deed in respect of the villa plot was executed by the 1st Respondent/Promoter on 01.06.2012 in favour of the Appellant/Allottee. As per the said Construction Agreement, the 1st Respondent/Promoter agreed to hand over the plot within 15 months, with a grace period of 3 months.

7. As the 1st Respondent/Promoter failed to handover the apartment as agreed, the Appellant/Allottee preferred a complaint before the TNRERA in C.No.165/2018 against the Respondents 1 & 4, seeking for a direction to hand over the villa immediately. After enquiry, the TNRERA, by its order dated 20.06.2019, directed the 1st Respondent/Promoter to hand over the villa on or before 15.07.2019. Despite such direction, the 1st Respondent/Promoter handed over possession with a delay of four months i.e., on 18.11.2019, that too, without providing all the amenities.

8. Considering all these aspects, the learned Adjudicating Officer, TNRERA directed the 1st Respondent/Promoter to pay compensation by way of interest at 10.65% per annum for the delayed period on the amount paid by the Appellant/Allottee. However, the learned Adjudicating Officer exonerated the Respondents 2 and 3, from the liability of paying the compensation. It is as against the exoneration of Respondents 2 and 3, the present appeal has been preferred by the Appellant/Allottee.

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9. As already stated, there is no agreement executed between the Appellant/Allottee and the Respondents 3 and 4 at any point of time. The learned counsel for the Appellant/Allottee referred to an email dated 21.08.2013, sent by the 4th Respondent to the Appellant/Allottee. The contents of the said email are extracted as follows:

> *Email dated 21.08.2013,*
> *"Greetings from Artha, we are pleased to say that Artha is working rigoursly with our partner Green Avenue Homes to ensure all amenities and pending works are completed on priority. .....(omitted) "*

The learned counsel for the Appellant/Allottee contended that in the above said email, the 4th Respondent M/s.Artha Real Estate Corporation claimed to be the partner of M/s Green Avenue Homes (1st Respondent), and as such, the 4th Respondent M/s.Artha Real Estate Corporation is also a promoter and liable to pay compensation along with the 1st Respondent. Further the learned Counsel for the Appellant/Allottee contended that the 3rd Respondent M/s.Bennet Property Holdings Company Limited, being the resulting company after amalgamation, is also liable to pay compensation to the Appellant/Allottee. It is pertinent to note that the Appellant/Allottee has not pleaded in her complaint that the 1st Respondent/Promoter and the 4th Respondent are partners. According to the Appellant/ Allottee, the Respondents 3 and 4 are joint promoters along with the 1st Respondent/Promoter. But the Appellant/Allottee failed to prove her contention by any documentary evidence. Therefore, mere mentioning of the word "partner" in the email sent by the 4th

Respondent will not in any way improve the case of the Appellant/Allottee.

10. The learned counsel appearing for the Respondents 3 and 4 referred to an email dated 11.12.2013 sent by 4th Respondent to the Appellant/Allottee. The relevant portion of the said email is extracted hereunder:

> *"Dear Customer, Greetings from Artha. This is with regard to the communication you must have received from Green Avenue Homes and Gardens that Artha will not get involved in day to day operations of the project Dakshin City due to discontinuation of the marketing agreement. (omitted) ….. "*

In the said email communication sent to the Appellant/Allottee during December 2013 itself, the 4th Respondent had clearly informed that the marketing agreement between the 1st Respondent/Promoter and the 4th Respondent has been discontinued and that the 4th Respondent will not get involved in the day to day operations of the 1st Respondent/Promoter Company.

11. On a reading of the Marketing Agreement dated 15.11.2011, it is clear that the name of the 4th Respondent has not been mentioned anywhere. The said Marketing Agreement was executed between the 1st and 3rd Respondents only. The 1st Respondent/Promoter has been denoted as 'Developer' and the 3rd Respondent has been denoted as 'Marketing Associate'. Further, under the heading 'Payment and Commission' in Clause 5.1 of the said agreement, it has been mentioned as follows:

> 5.<u>PAYMENT AND COMMISSION</u>
>
> *5.1. The Developer has fixed Rs.2500/- Per Sq. Ft on the built up area as mentioned in the Annexure 1 of this Agreement as Base*

Price for all the 23 units. The Marketing Associate is allowed to fix the selling price and sell the property at any price greater than the base price. The difference between the base price and the selling price fixed by the Marketing Associate shall henceforth be referred to as "Margin" and shall be absolutely enjoyed by the Marketing Associate. If the villas are sold over and above the base price the difference amount (margin) will be payable as the sales margin to the Marketing Associate. .... (omitted)

Clause 6.1 of the said Marketing agreement reads as follows:

6 . GENERAL TERMS AND CONDITIONS

6.1 The Developer shall alone be held responsible for any dispute in the title of the property, approvals of the layout and lapses if any and Developer is liable for development quality and lapses if any

6.2 The Marketing Associate is in no way responsible with regard to titles, development, quality, etc. The responsibility of the Marketing Associate rests only with procuring sale of the property and ends once the registration of the said villas are completed to each individual prospective buyers"

The above said Clauses contained in the said Marketing Agreement dated 15.11.2011 would clearly establish that the 3rd Respondent was only a marketing agent and their job ends once the registration of Sale Deeds in respect of the villas sold are completed.

12. By no stretch of imagination, the Respondents 3 and 4 can be termed as Promoters within the definition of Promoters as defined under Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016. Therefore, the findings of the learned Adjudicating Officer that the Respondents 2 and 3 are only agents and as such, they are not

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liable to pay any compensation, is perfectly correct. Hence, we do not find any ground to interfere with the findings of the learned Adjudicating Officer, TNRERA. Consequently, the appeal is liable to be dismissed.

13. In the result, the appeal is dismissed. No Costs.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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